

TITLE 15. BOARD OF PRISON TERMS

NOTICE OF PROPOSED REGULATORY ACTION RN 04-01

SUBJECT: *ADMINISTRATIVE APPEALS*

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to repeal Title 15 (Division 2), California Code of Regulations sections (§§) 2050 through 2052 and §§ 2054-2056; amend §§ 2072, 2073 and 2074; CCR § 2057 will be amended and renumbered to *new* proposed CCR § 2251.5.

AUTHORITY

These regulations are submitted pursuant to the Board's authority under Penal Code (PC) §§ 3052 and 5076.2.

REFERENCE

These regulations are amended to implement, interpret, and/or make specific, PC §§ 3041, 5076.2; *Armstrong v. Schwarzenegger* (2002) USDC-ED, Case No. C94-02307, and Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. ***The written comment period on the proposed regulations will close at 5:00 p.m., on June 22, 2004.*** All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile No.: (916) 322-3475
E-mail: regcomment@bpt.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public, a compendium of its rules and regulations.

Existing regulations, CCR §§ 2050 through 2057 set out the administrative appeals process whereby “[a]ny person under the Board’s jurisdiction may appeal any decision of the Board which affects that person”

In re Muszalski (1975) 52 Cal.App.3d 500, recognized that agencies “should be given a chance to discover and correct its own errors,” i.e., administrative appeals, but in doing so, must provide a means for prisoners and parolees to exhaust their administrative remedies before they can sue for relief in the California courts.

The permanent injunction issued in *Armstrong v. Davis* [USDC-ND, Case No. C 94-02307], ordered the Board to provide effective assistance to parolees and prisoners who could not understand the appeals process. In addition, the court ordered that Americans with Disabilities Act (ADA)-related appeals be decided within 30 days. In addition, the court ordered the Board to implement a grievance procedure for the processing of complaints of denials for requests for accommodations. Accommodations for prisoners or parolees with disabilities are currently addressed in CCR § 2057.

Under the *Valdivia* Remedial Plan (VRP), all parolees facing revocation will be provided attorneys before probable cause hearings. ADA needs and any potential appeal concerns will be coordinated and resolved by that private attorney.

The Board proposes to repeal the Appeals regulations based on an extensive assessment of priorities due to impending changes to the Board’s revocation process and current budgetary reductions which have caused the Board to reallocate current resources to more essential functions. The elimination of the appeals function will enable prisoners and parolees to go directly to the courts instead of first exhausting their administrative remedies (through the current appeal process) which, given the Board’s limited resources, may experience long delays. In place of the appeals function, the Board will continue to respond to routine complaints (on Board decisions) including such issues as good-time credits, discrepancies in base term calculations, etc. In addition, the Board will be enhancing its decision review function to ensure that their decisions are consistent and meet all applicable requirements.

Lastly, the Board has incorporated provisions of the *Armstrong* injunction, specifying that a prisoner or parolee or a “multijurisdiction” prisoner or parolee who is dissatisfied with a decision by the Board regarding accommodation for a disability may “grieve” that decision in accordance with the injunction.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: *None*
- Cost or savings to any state agency:
The Board estimates that it will not incur cost savings in the current fiscal year due to the transition of its processes; however, in Fiscal Years 2004-2005 and 2005-2006 and successive Fiscal Years, the Board estimates cost savings in the amount of \$415,730.
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Board has determined that the proposed amendment to regulations will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

CONTACT PERSON

Please direct requests for copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
(916) 445-5277

In any such inquiries, please identify the action by using the **Board's regulation control number RN 04-01**.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Denise Schmidt, 323-0944**.

Questions on the substance of the proposed regulatory action may be directed to: **Marc Remis, 322-6729**.

Website Access: Materials regarding this proposal can be accessed from the Board's website at: www.bpt.ca.gov.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public upon

request from the agency contact person indicated above. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are available on the Board's Internet Home Page at: www.bpt.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following the preparation of the final statement of reasons, copies may be obtained from the Board contact person, and also by fax, or e-mail.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.